

Message Text

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E.O. 11652: N/A
TAGS: EFIN, KS
SUBJECT: EMERGING ECONOMIES COMPANY

REF: STATE 187994

1. EUGENE ADAMS, PRESIDENT, EMERGING ECONOMIES CORPORATION (EEC), AND ROBERT B. ROSS, NEW YORK ATTORNEY, VISITED KOREA FROM JULY 13 TO JULY 29.

2. FOLLOWING A MEETING WITH THE AMBASSADOR ON JULY 14, EXTENSIVE ASSISTANCE GIVEN AT ALL TIMES BY ECONOMIC COUNSELOR, LEGAL OFFICER (AID), COMMERCIAL COUNSELOR, COMMERCIAL ATTACHE, AND FSLs. AS A RESULT OF THE MEETING WITH THE AMBASSADOR, ADAMS PREPARED A SUMMARY OF FACTS SURROUNDING THIS MATTER, AND THE AMBASSADOR PERSONALLY GAVE THIS DOCUMENT TO DEPUTY PRIME MINISTER NAM. ECON COUNSELOR RECEIVED ORAL ANSWER FROM DPM WHICH QUESTIONED EEC'S CONTENTION THAT COMMERCIAL CODE SHOULD PRE-EMPT FOREIGN CAPITAL INDUCEMENT LAW (FCIL). THE DPM NOTED THAT A REQUEST FOR AN EXCEPTION TO THE LIMITATIONS IMPOSED UNDER THE FCIL (SEE PARA SIX BELOW) HAD BEEN RECEIVED FROM EEC IN DECEMBER 1973 AND HAD BEEN REJECTED BY THE FORMER DEPUTY PRIME MINISTER.

3. ASSISTANCE CONSISTED OF ARRANGING APPOINTMENTS; CALLING ON ROKG OFFICIALS AS CONSIDERED NECESSARY; AND FREQUENT CONSULTATIONS BETWEEN ONE OR MORE EMBASSY OFFICERS AND ADAMS AND ROSS. SINCE THIS IS LEGAL PROBLEM, ADAMS AND ROSS HAVE APPROACHED IT IN PROPER WAY BY USE OF KOREAN
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ATTORNEYS, AND SEPARATE DISCUSSIONS WITH SAM YANG FOODS

COMPANY AND ROKG OFFICIALS.

4. NET RESULTS HAVE BEEN NEGATIVE AND ADAMS HAS TAKEN
CORRECT STEP BY SOLICITING WRITTEN OPINION FROM EPB IN
ANSWER TO PETITION OUTLINING POSITION OF EEC.

5. IN DISCUSSION WITH EPB OFFICIAL, COMMERCIAL COUNSELOR
INFORMED THAT SUCH A PETITION WOULD BE FORWARDED TO MINISTRY
OF JUSTICE FOR LEGAL INTERPRETATION. EPB HAS NOW ADVISED
EMBASSY THAT REPLY TO PETITION WILL CONSIST SOLELY OF EPB'S
LEGAL OFFICERS AND IF EEC WISHES PURSUE MATTER FURTHER
AFTER EPB OPINION RENDERED, IT MUST DO SO THROUGH COURT
ACTION. IN VIEW OF INFORMAL BUT UNANIMOUS OPINION OF EPB
OFFICIALS EXPRESSED ON SEVERAL OCCASIONS TO EMBASSY OFFICERS,
COURT ACTION SEEMS LIKELY TO BE REQUIRED.

6. CRUX OF MATTER REMAINS LEGAL INTERPRETATION BETWEEN
CERTAIN SECTIONS OF FCIL AND THE COMMERCIAL CODE AND
WHICH WILL PREVAIL IN CASE OF EEC. EPB OF OPINION THAT FCIL
WHICH LIMITS ACQUISITION OF SHARES TO ORIGINAL AMOUNT OF
INVESTMENT SHOULD APPLY. EEC BELIEVES COMMERCIAL CODE
WHICH DOES NOT CONTAIN THIS LIMITATION SHOULD APPLY. FCIL
HAS EFFECT OF DILUTING EEC'S ORIGINAL INVESTMENT OF SEVEN
PERCENT WHICH CASH IS PAID AT UNREALISTIC PAR VALUE IN LIEU
OF DIVIDENDS SUFFICIENT TO MAINTAIN EEC'S ORIGINAL
EQUITY INVESTMENT.
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